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U.S. HOUSE OF REPRESENTATIVES
PERMANENT SELECT
COMMITTEE ON INTELLIGENCE
WASHINGTON, D.C. 20515

Karen — attached is a copy of the bill and a two page key-point summary.

David
19 March 1984

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I

98TH CONGRESS
2D SESSION

H. R. 5164

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1984

Mr. MAZZOLI (for himself, Mr. BOLAND, Mr. ROBINSON, and Mr. WHITEHURST) introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

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A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Information Act".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

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"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

"SEC. 701. (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of the Freedom of Information Act (5 U.S.C. 552) which require publication or disclosure, or search or review in connection therewith.

"(b) For the purposes of this title the term 'operational files' means—

"(1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaision arrangements or information exchanges with foreign governments or their intelligence or security services;

"(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; or

"(3) files of the Office of Security which document investigations conducted to determine the suitability of

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potential foreign intelligence or counterintelligence sources;

except that files which are the sole repository of disseminated intelligence are not operational files.

"(c) Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

"(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a);

"(2) any special activity the existence of which is not exempt from disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552); or

"(3) the specific subject matter of an investigation by the intelligence committees of the Congress, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

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"(d)(1) Nonoperational files which contain information derived or disseminated from exempted operational files shall be subject to search and review.

"(2) The inclusion of information from exempted operational files in nonoperational files shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

"(3) Records from exempted operational files which have been disseminated to and referenced in nonoperational files and which have been returned to exempted operational files for sole retention shall be subject to search and review.

"(e) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

"(f) Whenever any person who has requested agency records under the Freedom of Information Act (5 U.S.C. 552) alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in subparagraph 552(a)(4)(B) of title 5, United States Code, except that--

"(1) information specifically authorized under criteria established by an Executive order to be kept

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secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Agency shall be examined ex parte, in camera by the court;

"(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

"(3) when a complainant alleges that requested records were improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

"(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Agency shall meet its burden under subparagraph 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by affidavit that exempted files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

"(B) in making its determination under subparagraph (A) of this paragraph, the court may not order the Agency to review the content of any operational file or files unless the complainant disputes the Agen-

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cy's showing with a sworn written submission based on personal knowledge or otherwise admissible evidence;

"(5) in proceedings under paragraphs (3) and (4) of this subsection the parties shall not obtain discovery pursuant to rules 26 through 35 of the Federal Rules of Civil Procedure, except that requests for admission may be made pursuant to rules 26 and 36;

"(6) if the court finds under this subsection that the Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), and such order shall be the exclusive remedy for failure to comply with this section; and

"(7) if at any time following the filing of a complaint pursuant to this subsection the Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

"DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

"SEC. 702. (a) Not less than once every ten years, the Director of Central Intelligence shall review the exemptions

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in force under subsection (a) of section 701 of this Act to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

"(b) The review required by subsection (a) of this section shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

"(c) A complainant who alleges that the Agency has improperly withheld records because of failure to comply with this section may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining (1) whether the Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this Act or within ten years after the last review, and (2) whether the Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review."

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.
"Sec. 702. Decennial review of exempted operational files.".

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SEC. 3. The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

SEC. 4. The amendments made by section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984.

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SUMMARY OF "CENTRAL INTELLIGENCE AGENCY INFORMATION ACT"

The bill consists of four sections.

Section 1 provides that the short title of the bill is the "Central Intelligence Agency Information Act."

Section 2 amends the National Security Act of 1947 to permit the Director of Central Intelligence to exempt certain specifically defined CIA operational files from the search, review, and disclosure requirements of the Freedom of Information Act (FOIA).

Section 3 requires the Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and historians, to report by June 1, 1985 to the intelligence committees of the Congress on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

Section 4 makes clear that exemptions of CIA operational files from FOIA search and review apply to all FOIA requests, whether made before or after enactment of the bill, and to all FOIA lawsuits filed after February 7, 1984 (the day before the HPSCI Subcommittee on Legislation FOIA hearing).

Key Provisions

Section 2 of the bill contains the critical provisions of the legislation. Section 2 enacts a new Title VII of the National Security Act of 1947, to provide for exemption of certain CIA operational files from the FOIA process. The new title consists of sections 701 and 702 of the National Security Act. These provisions can be summarized briefly as follows:

Subsection	Content
701(a)	Permits the DCI to exempt certain CIA "operational files" from the FOIA process.
701(b)	Defines the term "operational files" to include only Directorate of Operations, Directorate for Science and Technology, and Office of Security files directly concerning intelligence sources and methods.
701(c)	Ensures that, notwithstanding exemption of operational files, such files will continue to be open for search and review for information concerning (1) U.S. persons who request information on themselves, (2) special activities the

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Subsection	Content
701(c) (Continued)	existence of which is not exempt from FOIA disclosure, and (3) the specific subject matter of investigations by the CIA, by the intelligence committees of Congress, or by executive branch oversight bodies of allegations of illegality or impropriety in the conduct of intelligence activities.
701(d)	Technical provisions ensuring that the transfer of records between exempted operational files and other files neither expands nor contracts the exemption authority granted to the DCI in subsection 701(a).
701(e)	Technical provision guarding against implied (as distinguished from express) repeal of subsection 701(a) by future enactment of statutes.
701(f)	Provides for a de novo substantive standard of judicial review of CIA compliance with section 701 within a precisely defined procedural framework, ensuring both protection for sensitive CIA information and effective judicial review.
702(a)	Requires the DCI to review exemptions of operational files at least once every ten years to determine whether such exemptions may be removed.
702(b)	Requires that the DCI's review of exemptions of operational files must consider the historical value or other public interest of the files and the potential for declassifying a significant part of the information they contain.
702(c)	Provides for limited judicial review of the DCI review of exemptions of operational files. The court's review of the DCI's action in this case is limited to determining whether the DCI actually conducted the review required by subsection 702(b) and whether the DCI actually considered the criteria set forth in subsection 702(c).

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